

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWIN PINEDA BARRIENTOS,

Petitioner,

v.

ROSEMARY NDOH, Warden,

Respondent.

No. 2:20-cv-02234-DJC-EFB (HC)

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (the "Original Petition"). (ECF No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 5, 2021, the Magistrate Judge filed findings and recommendations herein recommending that the Original Petition be denied. (ECF No. 20.) The findings and recommendations were served on all Parties and contained notice to all Parties that any objections were to be filed within fourteen days. (*Id.*) Petitioner filed objections to the findings and recommendations (ECF No. 23) and Respondent filed a response thereto (ECF No. 27).

On December 9, 2021, the Magistrate Judge held the findings and recommendations in abeyance pending further briefing. (ECF No. 28.) While the

findings and recommendation were held in abeyance, Petitioner asked the Court for leave to amend his Original Petition (ECF No. 37) and filed a second amended petition (the "Amended Petition") for the Court's consideration (ECF No. 41). On September 12, 2022, the Magistrate Judge lifted the order holding the findings and recommendations in abeyance and recommended that Petitioner's motion for leave to amend be granted in part to allow the case to proceed on only one prosecutorial misconduct claim ("PM III+") raised in the Amended Petition. (ECF No. 43.) On January 3, 2023, Judge Nunley, the previously assigned District Judge, adopted that recommendation in full. (ECF No. 47.) As Judge Nunley's order makes clear, the matter now proceeds solely on claim PM III+. (ECF No. 41.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a *de novo* review of this case, and, having carefully reviewed the entire file, finds the findings and recommendations to be supported by the record and by proper analysis. As the matter now proceeds solely on claim PM III+ as set forth in Petitioner's Amended Petition (ECF No. 43), and for the reasons stated in the August 5, 2021 findings and recommendations, the claims in Petitioner's Original Petition (ECF No. 1) are properly dismissed.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed August 5, 2021 (ECF No. 20) are ADOPTED IN FULL; and
2. Petitioner's original application for a writ of habeas corpus (ECF No. 1) is DENIED.

IT IS SO ORDERED.

Dated: October 5, 2023

  
Hon. Daniel J. Calabretta  
UNITED STATES DISTRICT JUDGE

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